



Participant Rule Review

Voice Recording

21 November 2017



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Participant Rule Review – Voice Recording

Objective

Following discussions with FMA, we are seeking to ensure that pre-order and order placement discussions involving personnel on the wholesale sales & trading and principal desks of NZX Trading Participants are captured via voice recording. NZX is considering this aim in the context of its current review of the Participant Rules and associated guidance.

Voice recording of client calls provides a form of evidence of client order conversations and instructions, but NZX recognises that the issue needs to be considered more broadly i.e. in the context of other means of electronic communication, physical order records and also in the context of trading conduct and conflicts management procedures generally.

Proposed outcome

NZX proposes to mandate voice recording requirements for Trading Participants in respect of all Employees working on, or otherwise providing this function, their wholesale sales & trading and principal (both facilitation and proprietary) desks (collectively “Relevant Employee Calls”). Those Employees otherwise providing this function include any Employee on a temporary or auxiliary basis. These voice recording requirements will apply to all Relevant Employee Calls wherever the Employee is located at the time.

The recording will need to capture all the conversations in relation to the Order and the Order Placement. Participants will either need to (A) ensure that all phone lines (including mobile phones) in the front office dealing room(s) for institutional and principal trading desks are recorded, or (B) ensure that all Relevant Employee Calls are conducted on recorded landlines (i.e. no mobiles). Feedback will be sought on whether this recording requirement should be extended to retail desks.

These recordings will be required to be retained for at least 12 months, although feedback will be sought on this point.

The requirements will include anti avoidance measures.

These measures will form part of the broader reviews being undertaken in respect of the Rules and guidance, in particular, the Trading Conduct and Conflicts Management guidance notes.

International comparison

Trading Participants in other jurisdictions must have their conversations recorded, such as the UK, Singapore and, to a limited extent, Australia under the ASIC / ASX 24 Market Integrity Rules (ASX 24 Rules and ASX Market Integrity Rule 4.1.10).

In the UK, a firm must take “reasonable steps” to record relevant telephone conversations and keep a copy of relevant electronic communications made, sent from or received on any equipment provided by the firm to an employee. This means that cell phones provided by the participant are also included, as well as landlines. Similarly, under the ASX 24 Rules, each full participant dealing with clients must record relevant conversations, via telephone lines and/or other electronic devices.

In both the UK and in Singapore, voice recordings must be kept for 6 months. The ASX 24 Rules requires recordings for 3 months.



The scope of what must be recorded varies. In the UK, recording telephone calls includes:

- receiving client orders;
- executing client orders;
- arranging client orders to be executed;
- carrying out transactions on behalf of a firm or another person's related to the firm's group;
- executing orders that result from decisions by the firm to deal on behalf of its client; and
- placing orders with other entities for execution that result in decisions by the firm to deal on its behalf.

Under the ASX 24 Rules, a participant is required to record conversations with clients and other parties relating to client instructions. In Singapore, a participant is only required to record and keep order instructions.

In Singapore, anti-avoidance measures include prohibiting staff members from receiving client order instructions through mobile phones that are not recordable while they are on the trading floor, in the trading room, their usual place of business where orders are received or usual place where business is conducted. It is also stated that a business should have a written policy in place to explain and enforce the prohibition. In the UK, a firm must try and take reasonable steps to prevent an employee from making, sending and receiving relevant telephone conversations and electronic communications on privately owned equipment.

NZX proposed approach

NZX is looking to implement requirements that are similar to these other jurisdictions as follows:

NZX proposes to require Trading Participants, in respect of Relevant Employee Calls, to take "reasonable steps" to record all telephone conversations and keep a copy of electronic communications made, sent from or received on any electronic equipment provided by the firm for use by the Employee. We will outline what constitutes "reasonable steps" within guidance.

These Trading Participants will be required to record and retain conversations with clients and other parties relating to wholesale client instructions and principal trading decisions. This will mean that recordings will need to capture Orders received as well as the conversations that lead to the actual Order being placed.

NZX proposes to require the recordings to be retained for 12 months, on the condition that if any issue arises in relation to a particular Order during that 12 month period, the voice-recordings will need to be kept for as long as the issue in relation to that client Order remains active and unresolved. Noting the differences in international requirements in this area, we will seek feedback on whether 12 months is the appropriate time frame.

In respect of anti-avoidance measures, NZX proposes to require Trading Participants to take reasonable steps to prevent a relevant Employee from making, sending and receiving relevant telephone conversations and/or electronic communications on privately owned equipment, or on non-recorded equipment provided by the Participant, and to have a documented policy in this regard (unless a Participant chooses to have such mobile lines recorded)



Feedback sought

NZX seeks feedback on the proposed outcome, in particular the following:

1. Is the scope of “Relevant Employee Calls” sufficiently broad, or should it be extended to cover Retail sales and trading desks as well?
2. Does the description of who is captured in respect of “Relevant Employee Calls” adequately identify who within your business this requirement will apply to?
3. Are there any additional forms of communication that should be required to be recorded?
4. Should an alternate retention period be considered other than 12 months? If so, please provide the basis for such consideration.
5. Do you foresee any unmanageable complications in implementing the proposed requirement, including the anti-avoidance requirements?
6. What is a reasonable timeframe for implementation of the proposed requirements?

